

**PANASONIC AVC NETWORKS JOHOR
MALAYSIA SDN BHD**

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v.

PALANYAPPAN ARUMUGAM

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HIGH COURT MALAYA, JOHOR BAHRU
MOHD ZAWAWI SALLEH JC
[JUDICIAL REVIEW NO: MT(3) 25-2-2009]
27 MAY 2009

CIVIL PROCEDURE: *Certiorari - Application for an order of certiorari to quash award of Industrial Court - Award allowed respondent's application to reinstate case - Whether there was breach of natural justice and procedural fairness - Whether Industrial court acted illegally, irrationally or unreasonably - Whether Award was "so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at" - Whether there were good grounds to warrant reinstatement of respondent's claim - Rules of the High Court 1980, O. 53*

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On 11 October 2001, the applicant issued a show cause letter to the respondent that it had come to the respondent's management's attention that the respondent had been actively involved in the soliciting of illegal gratification in form of cash from certain contractors of the applicant, including one SMC Technology (M) Sdn Bhd, so that the said companies perform and continue to benefit out of the contracts entered into with the applicant. The respondent was requested to forward his explanation. Disatisfied with the explanation, the applicant suspended the respondent and conducted a domestic inquiry. The Board of Inquiry found the respondent guilty of the charges against him and recommended termination. The applicant terminated the respondent's service *vide* a letter dated 29 October 2001. Subsequently, the respondent made a representation to the Industrial Relations Officer, Johor Bahru, claiming that he was unfairly dismissed by the applicant and the matter was referred to the Industrial Court for a decision under s. 20(3) of the Industrial Relations Act 1967 ("the Act"). When the case came up for mention on 4 October 2004, the applicant's representative was present but the respondent was absent. The Industrial Court adjourned the case to 25 November 2004. On that date, the applicant's representative was present but the respondent was again absent. The Industrial Court struck out the case with liberty to reinstate the same being Award No. 142 of 2005.

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- A** Subsequently, on 30 March 2005, the court amended the said award giving the respondent six months to apply to reinstate the claim. The respondent filed an application on 15 August 2008 to reinstate the claim. The Industrial Court, after considering the affidavits and submissions by counsels for the applicant and respondent, allowed
- B** the respondent's application to reinstate the case and handed down its Award No. 2092 of 2008 (the award). The applicant then filed an application (encl. 10) for judicial review under O. 53 of the Rules of High Court 1980 ("RHC 1980") for an order of *certiorari* to quash the award.
- C** The applicant attacked the award on the grounds that (i) the Industrial Court committed a breach of the principles of natural justice when it took into account the "Afidavit Lanjutan" filed by the respondent after directions were issued for the filing of written submission but without giving an opportunity to the applicant to
- D** reply and therefore the applicant had been prejudiced; and (ii) the award was an unreasonable exercise of discretionary power to reinstate in that it was "so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it",
- E** so called "irrationality" or "Wednesbury unreasonableness". The applicant referred to the fact that there was no prayer for extension of time in the respondent's application, there was insufficient explanation of the respondent's non-attendance in court on 4 October 2004 and 25 November 2004, there was inordinate delay
- F** by the respondent in making the application which was not sufficiently explained, the respondent failed to notify his change of address and the Industrial Court gave undue weight to the respondent's assertion that he was seriously ill.

Held (dismissing the applicant's application with costs)

- G** (1) The fact that the applicant was not given an opportunity to reply to the 'afidavit lanjutan' did not arise at all. The applicant could have filed a reply to the said affidavit but elected not to do so. No adjournment was sought by the applicant's counsel to enable it to file a reply. The records of the proceedings
- H** revealed that the Chairman of the Industrial Court did not restrict the applicant from presenting his case by "affidavit in reply". The applicant's counsel had not alleged any specific prejudice to the applicant. After scrutinizing all the affidavits filed and the award, there was no material before the court to
- I** enable it to conclude that there was a reasonable possibility the award could have been different if the applicant had filed an

- affidavit in reply. On the facts of this case, there had not been any breach of the principles of natural justice or procedural fairness as contended by the applicant. *Rohana Arifin & Anor v. Universiti Sains Malaysia* (dist). (paras 12-14) A
- (2) There was no evidence to conclude that the Industrial Court had acted illegally, irrationally or unreasonably. On the allegation of inordinate delay, considering there was no procedure provided in the Act and its rules on how to go about reinstating a claim, the delay in filing the application ought not to be used against the respondent. It was equitable and of good conscience that the respondent be allowed to present his case on his alleged unfair dismissal and a decision made only after the merits of the whole case had been heard by the court. (paras 20-27) B C
- (3) On the allegation that the respondent had not sufficiently explained the reasons for his absence in court on 4 October 2004 and 25 November 2004, the respondent had furnished evidence of his poor health at the material time and that he had been hospitalized as he was seriously ill. Further, the respondent had shifted his place of residence at the material time and thus did not receive any of the court's letters and Form F informing him about the mention dates of the case on 6 September 2004. The respondent failed to notify his change of address as being a lay person he did not know the procedures to be followed. With respect to the applicant's submission that undue weight was given to the respondent's assertion that he was seriously ill, it was clear from the totality of the award that this was merely one of the factors the Industrial Court considered in handing down the award. The applicant's assertion that it would face difficulties in securing the attendance of witnesses and witnesses' ability to recall the incident may be diminished, was without merit. This bare statement was unsupported by any cogent evidence. The applicant had not identified its witnesses nor stated their present whereabouts and what attempts had been made to trace them. *Bank Pusat Kerjasama Bhd (in receivership) v. Mahkamah Perusahaan Malaysia & Anor* (foll); *Guardian Security Consultants Sdn Bhd v. Joe Helen M Ponnuru* (foll). (paras 28-32) D E F G H
- (4) Accordingly, the Industrial Court was justified in granting the application to reinstate the case. The court agreed with the Industrial Court's conclusion that the respondent had established good grounds to warrant reinstatement of his claim. The court also found that the Industrial Court had properly I

- A appreciated the facts and the law in considering the merits of the respondent's application. There was ample evidence to entitle the Industrial Court to reach the conclusions it did. There was no error of law on its part nor did it misappropriate the available evidence. The applicant had failed to demonstrate to this court that the Industrial Court's award was "so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at". Therefore, there was no reason to disturb the award of the Industrial Court. (paras 33-35)
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Case(s) referred to:

- B Surinder Singh Kanda v. The Government of Federation of Malaysia* [1962] 1 LNS 14 PC (**fol**)
- American International Assurance Co Ltd v. Dato' Lam Peng Chong & Ors* [1999] 2 CLJ 771 CA (**refd**)
- D *Bank Pusat Kerjasama Bhd (In Receivership) v. Mahkamah Perusahaan Malaysia & Anor* [1994] 4 CLJ 341 HC (**fol**)
- Council of Civil Service Unions v. Minister for the Civil Service* [1985] AC 374 (**refd**)
- Goh Keah Hock v. Mahkamah Perusahaan, Malaysia & Anor* [2002] 1 AMR 63 (**refd**)
- E *Guardian Security Consultants Sdn Bhd v. Joe Helen M Pongu* [2003] 3 ILR 993 (**fol**)
- Malayawata Steel Berhad v. Union of Malayawata Steel Workers* [1977] 1 LNS 69 (**refd**)
- PP v. Wong Kok Wah* [2000] 1 CLJ 217 CA (**refd**)
- F *R Rama Chandran v. The Industrial Court of Malaysia & Anor* [1997] 1 CLJ 147 FC (**fol**)
- Rohana Arifin & Anor v. Universiti Sains Malaysia & Anor Case* [1989] 1 CLJ 559; [1988] 2 CLJ (Rep) 390 HC (**dist**)
- Sheila Sangar v. Proton Edar Sdn Bhd & Anor* [2009] 8 CLJ 200 HC (**refd**)
- Swedish Motor Assemblies Sdn Bhd v. Hj Mohd Ison Baba* [1998] 3 CLJ 288 CA (**refd**)
- G *Telekom Malaysia Kawasan Utara v. Krishnan Kutty Sanguni Nair & Anor* [2002] 3 CLJ 314 CA (**refd**)

Legislation referred to:

- Industrial Relations Act 1967, ss. 20(3), 29(g), 30(5)
- H Rules of the High Court 1980, O. 53 r. 3(2)
- For the applicant - Gana Muthusamy; M/s Gana Muthusamy & Co*
For the respondent - Mathews George; M/s Mathews George & Co
- Reported by Susheila Sreedharan*
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JUDGMENT**A****Mohd Zawawi Salleh JC:****Introduction**

[1] This case concerns an application (encl. 10) for judicial review under O. 53 of the Rules of High Court 1980 ("RHC 1980") for an order of *certiorari* to quash the award of the Industrial Court which allowed the respondent's application to reinstate his case. On 25 November 2004, *vide* Award No. 142 of 2005, the Industrial Court has ordered that the respondent's case be struck off with a liberty to reinstate the case within six months from the date thereof.

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[2] Leave under O. 53 r 3(2) of the RHC 1980 was granted on 13 March 2009 (encl. 9) and all proceedings relating to Award No. 2092 of 2008 and Industrial Court Case No. 16/4-1872/04 have been stayed pending the final outcome of this application.

D**Brief Account Of The Facts**

[3] The brief facts of the case for the purposes of this application are as follows:

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(a) On 11 October 2001, the applicant issued a letter of show cause to the respondent that it has come to the attention of the management that the respondent has been actively involved in the soliciting of illegal gratification in the form of cash from certain contractors of the applicant, including one SMC Technology (M) Sdn Bhd, so that the said companies perform and continue to benefit out of the contracts entered into with the applicant. The respondent was requested to forward his explanation.

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(b) Not being satisfied with the explanation, the applicant suspended the respondent and conducted a domestic inquiry. A board of inquiry was duly constituted. The board found the respondent guilty of the charges proffered against him and recommended termination. The applicant terminated the respondent's service *vide* a letter dated 29 October 2001.

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(c) Subsequently, the respondent made a representation to the Industrial Relations Officer, Johor Bahru, claiming that he was unfairly dismissed by the applicant and the matter was referred to the Industrial Court for a decision under sub-s. 20(3) of the Industrial Relations Act 1967 ("the Act").

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- A (d) The event which precipitated in the striking out of the respondent's claim happened on 4 October 2004 where the case was fixed for mention. The case came up for mention on 4 October 2004. The applicant's representative was present but the respondent was absent. The Industrial Court adjourned the case to 25 November 2004. On that date, the applicant's representative was present but the respondent was again absent. The Industrial Court struck out the case with liberty to reinstate the same. The Industrial Court had delivered Award No. 142 of 2005. Subsequently, on 30 March 2005, the court amended the said Award giving the respondent six months to apply to reinstate the claim.
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- (e) The respondent filed an application on 15 August 2008 to reinstate the claim. The Industrial Court, after considering the affidavits and submissions by counsels of the applicant and respondent, allowed the respondent's application to reinstate the case and handed down its Award No. 2092 of 2008.
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The Applicable Law

- E [4] It is trite law that in judicial review proceedings of an award of the Industrial Court, the High Court does not exercise appellate power (*American International Assurance Co Ltd v. Dato' Lam Peng Chong & Ors* [1999] 2 CLJ 771).
- F [5] It is also settled law that the High Court will not interfere with an award of Industrial Court unless it can be conclusively established that the award is infected with errors of law. The errors of law that merit curial intervention by the High Court was formulated by Lord Diplock in the celebrated case of *Council of Civil Service Unions v. Minister for the Civil Service* [1985] AC 374 and adopted by our Federal Court in the case of *R Rama Chandran v. The Industrial Court of Malaysia & Anor* [1997] 1 CLJ 147, which stated as follows:
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- (a) Illegality – that the decision-maker had failed to keep strictly within the perimeters of his powers;
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- (b) Irrationality or “Wednesbury unreasonableness” – that the decision was ‘so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it’; and
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- (c) Procedural Impropriety – that the decision-maker failed to observe basic rules of natural justice and/or procedural rules.

[6] Similar view was expressed in *Sheila Sangar v. Proton Edar Sdn Bhd & Anor* [2009] 8 CLJ 200. Mohammad Ariff Yusof JC said at p. 206:

As I have indicated earlier, the first principle in judicial review is that review is concerned with the decision-making process, not the merits, substance or justification. The second principle is that there can be an exception to this first principle where the court can examine the substance or justification to satisfy itself that the decision maker has not transgressed the principles of procedural impropriety, illegality or irrationality (with a possible third principle, “proportionality”)

The Submission By The Applicant

[7] Before me, the Industrial Court’s award to reinstate the case was attacked on the following grounds:

- (a) that the Industrial Court committed a breach of the principles of natural justice when it took into account the “afidavit lanjutan” filed by the respondent after directions were issued for the filing of written submission but without giving an opportunity to the applicant to reply; and
- (b) that the Industrial Court’s award is an unreasonable exercise of discretionary power to reinstate in that it is “so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it”, so called “irrationality” or “Wednesbury unreasonableness”.

Ground (a)

[8] The complaint here is that on 25 September 2009, when the reinstatement application came up for hearing, the Industrial Court by consent, had ordered parties to file written submission, which were filed as follows:

- (i) The respondent’s Written Submission dated 11 October 2008 (see ‘HSK 8’ – p. 76 of encl. 5);
- (ii) The applicant’s Written Submission dated 27 October 2008 (see ‘HSK 9’ – p. 85 of encl. 5); and
- (iii) The respondent’s Reply Submission dated 5 November 2008 (see ‘HSK 10’ – p. 94 of encl. 10).

- A [9] Subsequent to the above direction, the respondent filed another 'afidavit lanjutan' (see 'HSK 11' – p. 101 of encl. 5), affirmed by him on 7 October 2008 and served on the applicant or the applicant's solicitors on 9 October 2009.
- B [10] In support of his arguments, learned counsel for the applicant cited *B Surinder Singh Kanda v. The Government of Federation of Malaysia*, [1962] 1 LNS 14; *Malayawata Steel Berhad v. Union of Malayawata Steel Workers* [1977] 1 LNS 69; and *PP v. Wong Kok Wah* [2000] 1 CLJ 217.
- C [11] Learned counsel for the applicant posits that by considering the "afidavit lanjutan" filed by the respondent and without giving an opportunity to the applicant to reply, the Industrial Court has received evidence from the respondent behind the back of the applicant. Therefore, the applicant has been prejudiced. In the
- D circumstances, this court is in a position to interfere and make an order of *certiorari*.

Finding Of The Court On Ground (a)

- E [12] Having given this issue my most careful consideration, I have come to the conclusion that the submission is clearly devoid of merit. First, the fact that the applicant was not given an opportunity to reply to the 'afidavit lanjutan' did not arise at all. The applicant could have filed a reply to the said Affidavit but elected not to do so. No adjournment was sought by learned
- F counsel to enable him to file a reply. The records of the proceedings revealed that the learned Chairman of the Industrial court did not restrict the applicant from presenting his case by "affidavit in reply". Secondly, it is material to note that learned counsel had not alleged any specific prejudice to the applicant.
- G Thirdly, after scrutinizing all the affidavits filed and the award, there was no material before the court to enable it to conclude that there is a reasonable possibility the award could have been different if the applicant had filed an affidavit in reply.
- H [13] In the case of *Rohana Arifin & Anor v. Universiti Sains Malaysia & Anor Case* [1989] 1 CLJ 559; [1988] 2 CLJ (Rep) 390, the court held:
- I (i) It is a well-established principle of administrative law that anything that restricts, or appears to restrict, the defendant's ability to present his case may be held to be a breach of procedural fairness and, thereby, susceptible to judicial review; for example, a defendant is generally entitled to notice of evidence that might

assist his case. It is, therefore, a breach of natural justice for the prosecution to conceal such evidence: *R v. Leyland Justice, ex p Hawthorn*. (p. 493 (left) B-C.

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- (ii) Natural justice is but fairness writ large and juridically. It has been described as fairplay in action. (p. 495 D (right)); and

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- (iii) I must next turn to consider another ground relied upon by the applicants as showing a lack of fairness on the part of the disciplinary authority and this is it was reflected in the procedure it adopted in the examination of certain student witnesses whose testimony was most material to charges 3, 4 and 5 which the applicant Hashim faced. (p. 496 B (left)).

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[14] This court agrees wholly with the principles propounded in the above case. However, on the factual matrix of this instant case, there has not been any breach of the principles of natural justice or procedural fairness in the manner contended by learned counsel for the applicant.

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[15] The practice and procedure in the Industrial Court is governed by the Act and the Industrial Court Rules 1967. The court is required to act according to equity, good conscience and substantial merits of the case without regard to technicalities and legal form. In this regard, the Court of Appeal in *Telekom Malaysia Kawasan Utara v. Krishnan Kutty Sanguni Nair & Anor* [2002] 3 CLJ 314 made the following observations:

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- (a) It is established law that the courts may through judicial review quash the award of the Industrial Court.
- (b) That however does not mean the courts should also through judicial reviews, introduce the technicalities of the court of law to the Industrial Court, the very thing that the creation of the Industrial Court was meant to avoid.
- (c) The Industrial Court should not be burdened with the technicalities regarding the standard of proof and the rules of evidence and procedure that are applied in the court of law.
- (d) The Industrial Court should be allowed to conduct its proceedings as a “court of arbitration” and be more flexible in arriving at its decision, so long as it gives special regard to substantial merits and decide the case in accordance with equity and good conscience.

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A Ground (b)

B [16] The complaint by learned counsel for the applicant here is that the award of the Industrial Court is an unreasonable exercise of discretionary powers to reinstate the case in that it is “so outrageous in its defiance logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at.”

[17] To support his arguments, learned counsel invites the court to consider the following facts:

- C** (a) that there was no prayer for extension of time;
- (b) that there was no sufficient explanation of non-attendance on 4 October 2004 and 25 November 2004 given by the respondent;
- D** (c) that there was inordinate delay in making the application which was not sufficiently explained when considering that the respondent was able to attend his criminal case;
- (d) that the respondent failed to notify his change of address; and
- E** (e) that undue weight was given to the respondent’s assertion that he was seriously ill.

Finding Of The Court On Ground (b)

F [18] At the outset, perhaps it is convenient to observe that under ground (b), learned counsel for the applicant mounted an attack against the finding of facts made by the Industrial Court based on the available evidence. If this court were to accede to the applicant’s argument, it would mean this court would be investigating the merits or justification of the award on the basis of facts and evidence found by the Industrial Court. This was in essence an invitation to this court to exercise appellate powers, not judicial review jurisdiction. In other words, the court will be using the remedy of *certiorari* “to cloak the exercise of appellate power”;

G *Swedish Motor Assemblies Sdn Bhd v. Hj Mohd Ison Baba* [1998] 3 CLJ 288. (See *Sheila Sangar v. Proton Edar Sdn Bhd & Anor* (*supra*)).

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[19] There is a plethora of weighty authorities to state that the reviewing court will not interfere with a trial court’s finding of facts unless the finding was completely unsupported by any evidence. In *Goh Keah Hock v. Mahkamah Perusahaan, Malaysia & Anor* [2002] 1 AMR 63, Faiza bin Tamby Chik J asserted that:

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(a) It is also trite that it is not the reviewing court's function to interfere on the insufficiency of evidence. A

(b) The reviewing court would not review, reassess, reappraise evidence or draw its own inferences as to facts from the evidence. B

(c) The conclusion of findings is purely for the Industrial Court in this instance.

(d) The reviewing court will not interfere with such findings merely on the basis that it may arrive at a different conclusion. C

[20] On the facts of this application, I cannot find any evidence to conclude that the Industrial Court had acted illegally, irrationally or unreasonably as contended by learned counsel for the applicant.

[21] The jurisdiction of the Industrial Court to strike out or dismiss a case without its merits being heard is derived from s. 29(g) of the Act which reads as follows: D

29. The court may, in any proceedings before it:

(g) generally direct and do all such things as are necessary or expedient for the expeditious determination of the matter before it. E

[22] In the case of *Bank Pusat Kerjasama Bhd (In Receivership) v Mahkamah Perusahaan Malaysia & Anor* [1994] 4 CLJ 341, Siti Norma J (as she then was) had, at p. 346, stated that: F

Since s. 29(g) of the Act enable the 1st respondent to strike out the 2nd respondent's case on 17 August 1992, without its merits being heard, likewise it is my considered opinion that the power to reinstate the very same case on good grounds being shown can be implied to the subsection and to that end, Award No, 346/92 has been properly made within the framework of the Act. G

[23] The question to ask in any particular case is what amounts to "good grounds" to warrant the Industrial Court's exercise of discretion to reinstate the claimant's case. In *Guardian Security Consultants Sdn Bhd v. Joe Helen M Ponnu* [2003] 3 ILR 993 the Industrial Court stated: H

Thus therefore it is clear from the authority that this court has the power to reinstate the case on good grounds being shown. The question is what are good grounds? Generally there are two and they are as follows: I

- A 1. Good reasons for the absence, and
2. There should not be inordinate delay in making the application.

[24] It is settled law whether to grant or deny an application to reinstate the case before the Industrial Court, rests within the sound discretion of the Industrial Court dependent on the facts and circumstances of each individual case. In this connection, the Industrial Court is enjoined by sub-s. 30(5) of the Act to act according to equity, good conscience and the substantial merits of the case and the interests of both the employer and employee are to be given equal consideration. This means that that equity and good conscience would apply both ways. Subsection 30(5) of the Act reads as follows:

- (5) The court shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form.

[25] The application of legal principles to any given case depends on the facts. Therefore, the issue before the court is whether on the facts there are good grounds shown by the respondent to successfully appeal to the good conscience of the Industrial Court to have his case reinstated (ie, whether there were good grounds to warrant reinstatement of his claim).

[26] I will discuss each point advanced by learned counsel for the applicant in turn.

F Inordinate Delay

[27] As regards the allegation of inordinate delay, it was not disputed that the notice of application had been filed 3 years 4 months and 15 days. Therefore, it was clearly a delay in the making of the application. Learned counsel's bone of contention here is that the respondent has lost his right to reinstate his case on ground of laches. However, considering the fact that there is no procedure provided in the Act and its rules on how to go about the reinstating a claim, the out-of-time filing of the notice of application, in the circumstances of this case, ought not to be taken against the respondent. Furthermore, sub-s. 30(5) of the Act should also be borne in mind when considering this application. I have no doubt that it is equitable and of good conscience that the respondent be allowed to present his case on his alleged unfair dismissal and decision be made only after the merits of the whole case have been heard by the court. As the object of reinstatement is to give the respondent/claimant an opportunity of being heard, the respondent should be given the benefit of doubt.

Good Reasons For Absence

[28] As regards the allegation that the respondent had not sufficiently explained the reasons for his absence in court on 4 October 2004 and 25 November 2004, the respondent had furnished evidence of his poor health at the material time. According to the respondent, on the mention date on 4 October 2004, he was absent because he had been hospitalized at Hospital Sultanah Aminah Johor Bahru as he was seriously ill. The respondent stated that he was suffering from serious illness such as diabetes mellitus, tuberculosis and diabetes refinopathy. The respondent also stated that he had shifted his place of residence at the material time. According to the respondent, he did not receive any of the court's letter and Form F informing him about the mention dates of the case on 6 September 2004 as the court's letter and Form F were served on the address at No. 46, Jalan Selasih, Taman Pasir Puteh, 81200 Pasir Gudang, Johor. The respondent said that at the material time he had shifted to the new premises at No. 10, Bayu 18, Taman Sri Alam, 81750 Masai, Johor.

[29] As regards the allegation that the respondent failed to notify change of address, it should be borne in mind that the respondent is a lay person who did not know the procedures to be followed.

[30] As regards the submission that undue weight was given to the respondent's assertion that he was seriously ill, it is clear from the totality of the award that this was merely one of the factors that the Industrial Court considered in handing down the award and not the sole factor.

[31] Learned counsel further submitted that the applicant was opposing the application to reinstate the case on the reason that the revival of the case would be prejudicial to the applicant. After such a long delay, the applicant would face difficulties in securing the attendance of the witnesses and witnesses' ability to recall the incident may be diminished. With respect, this submission is without merit. This bare statement is unsupported by any cogent evidence. The applicant has not stated who will be their witnesses, their present whereabouts and attempts to trace the said witnesses.

[32] It must be appreciated that the onus of demonstrating that the Industrial Court acted unreasonably in granting the application to reinstate the case squarely lie on the applicant. The applicant must avail tangible evidence to the court in order to discharge that burden. Indeed, the applicant must demonstrate to this court that

A the award to reinstate is “so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at”. The applicant has failed to do so.

B **Conclusion**

[33] I am of the considered opinion that the Industrial Court was justified in granting the application to reinstate the case. The court agrees with the conclusion made by the Industrial Court that the respondent has established good grounds to warrant reinstatement of his claim.

[34] The court also finds that the Industrial Court had properly appreciated the facts and the law in considering the merits of the respondent’s application. There was ample evidence to entitle the Industrial Court to reach the conclusions which it did. There was no error of law on its part. Neither did it misappropriate the available evidence. The applicant has failed to demonstrate to this court that the Industrial Court’s award was “so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at”. Therefore, there is no reason to disturb the award of the Industrial Court.

[35] In all the circumstances, the court dismissed the applicant’s application (encl. 10) with costs.

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